Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-49-92
ABDUL HAMID OMAR LP, EUSOFF CHIN AND MOHAMED DZAIDDIN SCJJ
10 JUNE 1993

Land Law *— Transfer — Estate land — Sale of portion of estate land — Whether there was need to obtain approval of Estate Land Board — National Land Code 1965 s 214A*

The appellant had agreed to sell a piece of land to the first respondent or his nominees. The agreement provided that both parties would apply to the Estate Land Board for approval of the sale of the land. No such application was made but the land was transferred to and registered in the name of the second respondent, who had been nominated by the first respondent as the purchaser of the lot. The second respondent applied for and obtained approval from the state authority for subdivision of the land and changing the category of land use from agriculture to dwelling and shop houses. Subsequently the appellant wrote to the second respondent objecting to the transfer of the land to the second respondent on the ground that no approval from the Estate Land Board had been obtained for such a transfer. The appellant filed a writ for an order for declaration that the transfer of the land was null and void and for an order of rectification of the register of titles. The appellant also entered a private caveat against the land. The second respondent then applied to remove the caveat. The High Court allowed the application of the second respondent but on appeal the Supreme Court restored the caveat pending the trial of the action. [See [1992] 1 MLJ 263.] The High Court gave judgment for the second respondent. The appellant appealed.

Held, dismissing the appeal:
In this case no application to the Estate Land Board was required to be submitted as s 214A(4) of the National Land Code 1965 stipulates that the application for approval is required only when the transfer, conveyance or disposal in any manner whatsoever of the estate land is made to two or more persons. Where the estate land or only a portion of it is to be transferred to one person, the Estate Land Board's approval is not required. The appeal was therefore dismissed and the private caveat removed.

[Bahasa Malaysia summary

Perayu telah bersetuju menjual sebidang tanah kepada penentang pertama atau orang yang dilantik olehnya. Perjanjian itu memperuntukkan bahawa kedua-dua pihak akan memohon kepada Lembaga Tanah Estet untuk meluluskan penjualan tanah itu. Tidak

ada permohonan seperti itu dibuat tetapi tanah itu telah dipindahmilik dan didaftarkan atas nama penentang kedua, yang telah dilantik oleh penentang pertama sebagai pembeli lot itu. Penentang kedua telah memohon dan mendapat kelulusan dari pihak berkuasa negeri untuk memecah bahagi tanah itu dan menukar kategori penggunaan tanah itu dari tanah pertanian ke tanah untuk pembinaan rumah dan rumah kedai. Kemudiannya perayu telah menulis kepada penentang kedua untuk membantah pindahmilik tanah itu atas alasan bahawa kelulusan Lembaga Tanah Estet tidak diperolehi. Perayu telah memfailkan suatu writ untuk perintah deklarasi bahawa pindahmilik tanah itu adalah batal dan tidak sah dan untuk mendapat suatu perintah pembetulan daftar hak milik. Perayu juga telah memasukkan kaveat persendirian terhadap tanah itu. Penentang kedua pula telah memohon supaya kaveat itu diketepikan. Mahkamah Tinggi telah membenarkan permohonan penentang kedua tetapi apabila rayuan dibuat Mahkamah Agong telah menempatkan semula kaveat itu sehingga perbicaraan tindakan itu. [Lihat [1992] 1 MLJ 263.] Mahkamah Tinggi telah memberi keputusan memihak kepada responden kedua. Peryu telah membuat rayuan.

Diputuskan, menolak rayuan itu:
Di dalam kes ini permohonan kepada Lembaga Tanah Estet tidak perlu dibuat kerana s 214A(4) Kanun Tanah Negara 1965 memperuntukkan bahawa permohonan untuk mendapat kelulusan itu hanya diperlukan apabila pindahan milik, pemindahhakan atau perlupusan dengan apa cara sekalipun tanah estet itu dibuat kepada dua atau lebih daripada dua orang. Apabila tanah estet itu atau sebahagiannya hendak dipindahmilikan kepada seorang sahaja, kelulusan Lembaga Tanah Estet itu tidak diperlukan. Oleh itu, rayuan itu ditolak dan kaveat persendirian perayu diketepikan.]

Notes
For a case on the transfer of estate land, see 8 *Mallal's Digest* (4th Ed) para 2067.

Legislation referred to
National Land Code s 214A

Appeal from: Civil Suit No S5–22–237–1987 (High Court, Kuala Lumpur)

Haji Sulaiman bin Abdullah and *K Thavakumar* (*Zain & Co*) for the appellant.
Siew Yew Ming (*Soo Thien Ming & Shahrizat*) for the respondents.

Eusoff Chin SCJ (delivering the grounds of judgment of the court): The appellant was the owner of Port Dickson-Lukut Estate (hereinafter referred

to as the estate). By a written sale and purchase agreement dated 20 March 1980, the appellant agreed to sell a portion of the estate to the first respondent. This portion is now known as Grant No 4125, Lot 849 mukim of Port Dickson, (hereinafter lot 849) having an area (after acquisition of a portion of it by the government) of approximately 139.5 acres. The estate is divided into four divisions, and lot 849 is in the Lukut division. Lot 849 is contiguous to lots 1516, 1517 and 1518 in the Lukut division. Lot 849 was planted with palm oil and rubber.

Clauses 4 and 5 of the agreement stated:

> 4 This agreement is conditional upon the approval of the Estate Land Board to the sale of the said land to the purchaser. The parties hereto shall use their best endeavours to obtain such consent and if such approval and consent are not given or obtained before the completion date hereinafter referred to then and in that event the vendor shall refund to the purchaser the deposit referred to in cl 2(a) and thereupon this agreement shall be null and void and cease to have any force or effect and neither party shall have any claim against the other in respect thereof. The parties hereto shall *within 21 days* from the date hereof submit a *joint application* to the Estate Land Board for such approval as aforesaid.
>
> 5 Subject to cll 2 and 4 hereof, the vendor shall within two (2) weeks of the completion date hand over to the purchaser the relevant document of title to the said land and a valid and registrable memorandum of transfer thereof in favour of the purchaser or *its nominee* or nominees and shall let the purchaser into possession of the said land. (Emphasis added.)

On 14 April 1981, pursuant to cl 5 of the agreement, by a deed of assignment, the first respondent nominated the second respondent as the purchaser of lot 849. This deed of assignment was acknowledged and consented to by the appellant on 22 September 1981 (see exh P4).

On 22 September 1981, the second respondent having paid the purchase price of RM844,800 lot 849 was transferred and registered into the name of the second respondent.

The second respondent then applied and obtained approval from the State Authority of Negeri Sembilan for subdivision, and changing the category of land use from agriculture to dwelling and shop houses. The letter from the State Executive Council produced as exh D13 states:

> Ruj kami: (94)dlm SUKNS 200(03)389/1 Klt 2
> Tarikh: 14 Julai 1986
>
> Dataran Segar Sdn Bhd
> Lot 46/381 dan 47/381
> Wisma Reka
> Taman Bukit Labu
> Seremban
> Negeri Sembilan.
>
> Tuan
>
> Per: Permohonan daripada Dataran Segar Sdn Bhd untuk *memecahkan sempadan* tanah Lot 849, Geran 41–25 mukim Port Dickson seluas 83.77 hektar (207) ekar dan *menukar syarat* lot-lot tanah yang telah dipecah sempadan daripada 'tiada' (pertanian) kepada bangunan kediaman dan bangunan perniagaan di

bawah *s 124A Kanun Tanah Negara.* (Kertas Mesyuarat No 638/86). (Emphasis added.)

Adalah saya diarah dengan hormatnya memaklumkan bahawa Majlis Mesyuarat Kerajaan yang bersidang pada 25 Jun 1986 yang lepas telah meluluskan permohonan tuan itu.

2 Syarat-syarat kelulusan itu akan disampaikan kepada tuan oleh pejabat yang berkenaan dengan secepat mungkin.

Sekianlah dimaklumkan, adanya.

Saya yang menurut perintah,
tt
(Mohd Dahan bin Abdollah)
Setiausaha
Majlis Mesyuarat Kerajaan
Negeri Sembilan.

(Translation)

Our ref: (94)dlm SUKNS 200(03)389/1 Klt 2
Date: 14 July 1986.

Dataran Segar Sdn Bhd
Lot 46/381 & 47/381
Wisma Reka
Taman Bukit Labu
Seremban
Negeri Sembilan.

Sir

Re: Application from Dataran Segar Sdn Bhd for subdivision of Lot 849 Grant 4125 mukim Port Dickson 83.77 hectares (207) acres in area and *changing* the category of land-use of the lots after subdivision from 'blank' (agriculture) to dwelling house and commercial building under *s 214A of the National Land Code* (Meeting Paper No 638/86). (Emphasis added.)

I have the honour to inform you that the State Executive Council which met on 25 June 1986 had approved your application.

2 The terms and conditions of approval will be sent to you by the relevant departments as soon as possible.

That is all I wish to inform you.

Yours obediently,
— Sgd —
(Mohd Dahan bin Abdollah)
Secretary
Executive Council
Negeri Sembilan.

Earlier to that the Land Office Port Dickson had written a letter to the second respondent thus:

Ruj kami: (35)dlm PTPD 528/115/85/04
Tarikh: 24 April 1986

A Tetuan Dataran Segar Sdn Bhd
No 31, Jalan SS 15/2A
Subang Jaya
47500 Selangor.

Tuan

B Cadangan untuk membangunkan Pekan Baru Port Dickson

Adalah saya dengan hormatnya merujuk kepada perkara yang tersebut di atas, sukacita dimaklumkan bahawa Majlis Mesyuarat Kerajaan yang bersidang pada 22 Januari 1986 dan mengambil keputusan bersetuju pada dasarnya cadangan konsep yang tuan kemukakan untuk membangunkan kawasan *Lot 849, Mukim* C *Port Dickson* seluas lebih kurang 157 ekar.

2 Disamping itu Majlis Mesyuarat Kerajaan telah juga memutuskan seperti berikut:

(i) Pekan Baru yang dicadangkan untuk dibangunkan itu ditukar namanya kepada Pekan Baru Lukut.

D (ii) Pihak syarikat yang berkenaan tidak dibenar untuk membangunkan sebarang tapak perusahaan di kawasan pekan baru ini.

(iii) Syarikat yang berkenaan adalah bertanggungjawab untuk menempatkan semula kuil Hindu dan juga lebih kurang 47 keluarga yang terlibat dengan projek pembangunan pekan baru ini dengan membayar gantirugi sebanyak RM20,000 kepada tiap-tiap satu keluarga.

E Sekian dimaklumkan dan terima kasih.

'Berkhidmat untuk negara.'

Saya yang menurut perintah,
tt
(Baba bin Hasan)
F b/p Pentadbir Tanah Daerah
Port Dickson

(Translation)

Our ref: (35)dlm PTPD 528/115/85/04
G Date: 24 April 1986

Tetuan Dataran Segar Sdn Bhd
No 31, Jalan SS 15/2A
Subang Jaya
47500 Selangor

H Sir

Proposal for development of Pekan Baru Port Dickson

I have the honour to refer to the above-mentioned subject and am glad to inform you that the State Executive Council on 22 January 1986 had made a policy I decision to approve your proposed development of lot 849, Mukim Port Dickson which is about 157 acres in area.

2 The State Executive Council also decided that:

(i) The proposed Pekan Baru (New Town) should be named Pekan Baru Lukut.

(ii) The company concerned is not allowed to develop in the new township, any industrial site.
(iii) The company concerned shall be responsible to relocate the Indian temple and about 47 families affected by this development project by paying to each family a compensation of RM20,000.

Thank you.

'Service for the nation.'

Yours obediently,
— Sgd —
(Baba bin Hasan)
for District Land Administrator
Port Dickson.

Then on 3 February 1987, about seven years after the agreement dated 20 March 1980, the second respondent received a letter from the appellant objecting to the transfer of the land to the second respondent on the ground that no approval from the Estate Land Board for such transfer had been obtained.

On 11 June 1987, the appellant filed a writ in the High Court, for the following orders:

(a) a declaration that the registration of the transfer of the said land to the second defendant without the prior consent of the Estate Land Board was null and void;
(b) an order that the register of titles be rectified by the reinstatement of the plaintiff as proprietor of the said land in place of the second defendant and on such rectification all moneys that have been paid to the plaintiff be refunded to the first defendant;
(c) if necessary an order that the first and second defendants do cause a retransfer of the said land to the plaintiff; and
(d) costs.

The main ground of appeal is that the land was transferred contrary to the provisions of s 214A of the National Land Code 1965. For ease of reference we quote s 214A here:

Control of transfer of estate land

(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred *to two or more persons* unless approval of such transfer ... has first been obtained from the Estate Land Board (hereinafter referred to as 'the Board') established under sub-section (3).
(2) The Registrar *shall not register* any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board.
(3) For the purpose of this section there shall be established an Estate Land Board consisting of—

(a) the State Secretary, who shall be the Chairman; and
(b) not more than four members appointed by the State Authority from amongst members of the Public Service.

(4) The proprietor or any co-proprietor of any estate land desiring to transfer ... such land to *two or more persons* shall together with such persons *jointly submit* an application to the Board in Form 13C.

(5) The Board may approve an application made under sub-section (4) and shall have power to refuse or cancel an approval of any such application if—

(a) it is satisfied that any statement or representation made in the application is false or incorrect; or

(b) it is satisfied that the applicant fails or refuses to comply with any direction given or restrictions or conditions imposed by it; or

(c) it appears to it that the approval of the application will not be in the public interest.

(6) Decision of the Board shall be by majority of votes; and in the case of equality of votes the Chairman shall have a casting vote.

(7) Before making any decision the Board may as it thinks fit call any person to give any statement before it or produce any document to be examined by it.

(8) Where approval of an application under sub-section (4) is refused or cancelled by the Board, the applicant may, within 30 days after the communication to him of the Board's decision of such refusal or cancellation, appeal in writing to the State Authority.

(9) The State Authority may confirm or reverse the decision of the Board: Provided that where the decisions of the Board is reversed by the State Authority, the State Authority may give such direction or impose such restriction or condition as it may think fit.

(10) Any person who obtains or attempts to obtain approval of the Board by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise or who fails or refuses to comply with any direction, restriction or condition imposed on him shall be guilty of an offence and shall on conviction be liable to a fine not exceeding $10,000 and where the offence is a continuing one shall be further liable to a fine of not exceeding $1,000 in respect of each day the offence is committed.

(10A)(a) *Any person who transfers*, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in *contravention of sub-section (1)*, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than one year and not more than three years and to fine not exceeding ten thousand dollars.

(b) *For the purpose of this sub-section*, the execution of an agreement to convey or dispose of the whole of an estate to two or more persons, or to convey or dispose of any portion or portions of an estate land *to one or more persons*, without the approval of the Board, shall be conclusive proof that the estate land is conveyed or disposed of in contravention of sub-section (1); and any act to demarcate an estate land or to cause or *permit the demarcation* of an estate land otherwise than in accordance with the provisions of this Act shall be prima facie proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of sub-section (1).

(11) For the purpose of this section 'estate land' means any agricultural land held under one or more than one title, the area or the aggregate area of

which is not less than 500 acres and the lots constituting such area are contiguous. (Emphasis added.)

(Note: In 1984, the words '500 acres' were amended to read '40 hectares'.)

Two years after filing the writ the appellant filed a private caveat on lot 849 on 8 November 1989. The second respondent then filed an application vide Originating Summons S6–25–2–90 to remove the caveat. The High Court allowed the application. However, on appeal the Supreme Court restored this caveat pending the outcome of the appellant's substantive application for declaration that the transfer of lot 849 to the second respondent was void.

It is not disputed that lot 849 was a part of an 'estate land' as defined in sub-s (11) of s 214A of the National Land Code 1965. It is also not disputed that in spite of cl 4 of the agreement and the provision of s 214A(4) of the National Land Code 1965, no application for the approval of the transfer was made to the Estate Land Board by the appellant jointly with the second respondent. It could be that both parties would have made the joint application for the approval of the transfer if the Land Registrar had asked them to do so because the Registrar has a duty under sub-s (2) of s 214A of the National Land Code 1965 to examine an instrument of transfer and if he finds that the transfer is subject to approval of the Estate Land Board, and no certificate was enclosed, he would have rejected the transfer. In this case the Registrar must have found that the land could be transferred without the approval of the Board. The question is whether the approval of the Estate Land Board is required in this particular case.

We are of the view that reading sub-ss (1) and (4) of s 214A, it appears that an application is not required to be submitted to the Estate Land Board at all. We are of this view because sub-s (1) of s 214A specifically states that no estate land can be transferred to two or more persons without the approval of the Estate Land Board, and sub-s (4) of s 214A makes it mandatory for an application to be submitted for approval of the Estate Land Board if the estate land is to be transferred to two or more persons.

Our attention was drawn by the learned counsel for the appellant to sub-s (10A)(b) of s 214A of the National Land Code 1965. We find that this sub-s (10A) was inserted by Act A124 effective from 21 October 1969. Sub-section (10A)(a) created an offence which is committed by a proprietor of an estate land if he contravenes the provision of sub-s (1) of s 214A. Sub-section (10A)(b), however, creates *a presumption* that if a proprietor of an estate land executes an agreement to convey or dispose the estate land to two or more persons, or to convey or dispose any portion or portions of the estate land to one or more persons without the approval of the Estate Land Board, *he commits the offence* under sub-s (10A)(a) of s 214A. We have come to this conclusion because of the clear introductory words used by Parliament in enacting this sub-s (10A)(b) which are: 'For the purposes of this sub-section ...', which means, 'For the purposes of sub-s (10A) only', which in turn means for the purposes of proof of any offence in any prosecution under sub-s (10A)(a). The provision in sub-s (10A)(b) therefore cannot and should not be stretched to supplement the precise words used by Parliament in sub-ss (1) and (4) of s 214A. While we quite appreciate that

A the object of s 214A is to discourage the fragmentation of estate lands we are reminded that the court's function is to interpret, not to make law. We are also quite aware of the consequence that if an estate land is transferred to two or more persons an estate land is fragmented into two or more portions. But we are here dealing with the requirement of an approval of the
B Estate Land Board. That provision is to be found in sub-s (4) of s 214A which in clear, plain words stipulates that the application for approval is required only where the transfer, conveyance or disposal in any manner whatsoever of the estate land is made to *two or more* persons. In other words, where an estate land or only a portion of an estate land is to be transferred to one person, the Estate Land Board's approval is not required. If, therefore,
C there is any lacuna in the law, it must be corrected through legislative means.

We, therefore, dismiss this appeal with costs.

Consequently, we made the order that the private caveat filed by the appellant on lot 849 which is the subject of Kuala Lumpur High Court
D Originating Summons S6–25–2–90 must also be forthwith removed and we so order. Since this court had held earlier that the caveat had been properly entered by the appellant, no damages should be allowed on account of the caveat, we hereby set aside the order made by the learned High Court judge that assessment of damages be made in favour of the respondent.

E *Order accordingly.*

Reported by Prof Ahmad Ibrahim

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